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**LEVINE, BLASZAK, BLOCK & BOOTHBY**

1300 CONNECTICUT AVENUE, NW

SUITE 500

WASHINGTON, D.C. 20036-1703

(202) 223-4980

FAX (202) 223-0833

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December 18, 1996

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: In the Matter of Federal-State Joint Board on Universal Service,  
CC Docket No. 96-45

Dear Mr. Caton:

Enclosed are an original and four copies of the Comments of the Information Technology Industry Council in the above-captioned matter. Please date stamp the additional copy and return it with our messenger.

If you have any questions regarding this filing, please do not hesitate to call.

Sincerely,



Janine F. Goodman

Enclosures

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Before the  
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Washington, D.C. 20554

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In the Matter of )

Federal-State Joint Board on )  
Universal Service )  
\_\_\_\_\_ )

CC Docket No. 96-45

**COMMENTS OF THE INFORMATION TECHNOLOGY  
INDUSTRY COUNCIL**

Fiona J. Branton  
Director, Government Relations  
and Regulatory Counsel  
Information Technology Industry Council  
1250 Eye Street, N.W., Suite 200  
Washington, D.C. 20005  
202-626-5751

Colleen Boothby  
Janine Goodman  
Levine, Blaszak, Block & Boothby  
1300 Connecticut Avenue, N.W.  
Suite 500  
Washington, D.C. 20036-1703  
202-223-4980

Counsel for the Information Technology Industry Council

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**COMMENTS OF  
THE INFORMATION TECHNOLOGY INDUSTRY COUNCIL**

**INTRODUCTION**

The Information Technology Industry Council ("ITI") files these comments in response to the FCC's November 18, 1996 Public Notice<sup>1</sup> inviting comments on the Federal-State Joint Board's Recommended Decision<sup>2</sup> ("Recommended Decision") in the docket captioned above.

ITI is the leading trade association for manufacturers and vendors of computers, computing devices, office equipment and information services. With the advent of merging video, consumer electronics, computing and telecommunications technologies, ITI members will continue to produce new and innovative audio, data, image and video services.

ITI generally applauds the Joint Board's Recommended Decision on Universal Service as a significant step in the direction of a pro-competitive, efficient marketplace that will require less regulation and as a step away from the

<sup>1</sup> Public Notice, DA 96-1891, released November 18, 1996.

<sup>2</sup> *In the Matter of Federal-State Joint Board on Universal Service*, WT Docket No. 96-45, Recommended Decision (rel. November 8, 1996) ("Recommended Decision").

hidden subsidies that historically have distorted telecommunications pricing and impeded the development of competition in telecommunications markets. In the following paragraphs, ITI addresses the specific issues of concern to its members.

**A. Definition of Core Universal Services (¶¶ 28 - 70)<sup>3</sup>**

In its Recommended Decision, the Joint Board proposed that only core telephony services should be subsidized by Universal Service support, defined as voice grade, touch tone, single party telephone service with emergency calling, directory assistance, interstate access, and operator services.<sup>4</sup> ITI supported this definition in its comments before the Joint Board and urges the Commission to adopt the Joint Board's recommended definition in this rulemaking. The Joint Board properly found that each of the identified services meets the statutory standard<sup>5</sup> by being already widely available and subscribed to by most residential customers; essential to the public health or public safety; and/or consistent with the public interest, convenience, and necessity.

**B. Calculation of Contribution Levels (¶¶ 183 - 317)**

The Joint Board recommended use of a forward-looking economic cost proxy model to determine the level of universal service support. The Joint Board reasoned that this methodology will "best approximate the costs that would be

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<sup>3</sup> Paragraph references in headings are to paragraphs in the Recommended Decision.

<sup>4</sup> Recommended Decision at ¶ 46.

<sup>5</sup> 47 U.S.C. § 254(c)(1)(A) - (D).

incurred by an efficient competitor entering the market” and that such support “should not be used to offset the costs of inefficient provision of services” or costs excluded from the definition of universal service.<sup>6</sup>

ITI supports the Joint Board’s recommendation. Universal service support levels should be targeted to the level required to meet the Telecommunications Act of 1996’s (“1996 Act”) <sup>7</sup> objectives of preserving and advancing universal service in ways that are consistent with the new competitive paradigm promoted by the Act.<sup>8</sup> Those objectives would be compromised by a support mechanism that unnecessarily burdens potential competitors of incumbent local exchange carriers (“ILECs”). A long run incremental cost methodology, in contrast, will ensure that universal support levels correspond to the true costs of providing universal service and thereby both encourage competition in rural high cost areas and bolster efficiency in the provision of universal service. Accordingly, ITI supports the Joint Board’s recommendation on this issue.

C. Neutral Third Party Administrator (¶¶ 824-833)

ITI also supports the Joint Board’s recommendation that a neutral third party, selected by a joint federal-state advisory committee through a competitive bidding process, administer the Universal Service support mechanisms. It is essential that the administrator of the universal service funding mechanisms

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<sup>6</sup> Recommended Decision at ¶ 270.

<sup>7</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. Section 151 *et. seq.*) (“1996 Act”).

<sup>8</sup> See 47 U.S.C. § 254(h)(2).

function as an impartial arbiter among the numerous contributing carriers and remove any suggestion of bias towards incumbent LECs or other carrier groups.

D. Mandatory Contributors (§§ 779 - 791)

ITI also supports the Joint Board's conclusion that information service providers and enhanced service providers (collectively "ESPs") are exempt from the universal service requirement under the provisions of the 1996 Act. In considering which carriers are subject to the Act's requirement for participation in Universal Service funding mechanisms, the Joint Board concluded that ESPs are not. Universal service contribution requirements apply to telecommunications services only. Information and enhanced service providers are not providers of "telecommunications services" as that term is defined under the 1996 Act. This interpretation is compelled by the plain language of the 1996 Act.<sup>9</sup>

The Joint Board concluded that ESPs who also "provide . . . interstate telecommunications to the public for a fee . . . would be required to contribute to support mechanisms based on the revenues derived from telecommunications services."<sup>10</sup> If the Commission adopts this conclusion, it should clarify that it refers only to companies who separately provide enhanced or information services and telecommunications services as common carriers. The Joint Board's statement may otherwise be misinterpreted to mean that the Board seeks to reclassify as regulated, basic services the unregulated enhanced

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<sup>9</sup> See 47 U.S.C. § 153(20); 47 U.S.C. § 254(c).

<sup>10</sup> Recommended Decision at ¶ 790.

offerings of companies who may rely on basic transmission services to provide their enhanced services.

E. Funding Mechanisms for Advanced Services to Schools and Libraries (¶¶ 607 - 613)

The Joint Board has recommended that carriers and non-carriers who provide certain advanced services to schools and libraries be reimbursed from universal service funding mechanisms.<sup>11</sup>

ITI agrees with the Joint Board that Section 254(h)(2) by its terms authorizes the Commission to establish rules for enhancing access to advanced telecommunications and information services for schools and libraries and that a reimbursement mechanism is an appropriate exercise of that authority. Section 254(h)(2) provides authority to the Commission that is separate and independent from the authority granted in Section 254(h)(1), which is limited to the provision of core universal services by telecommunications carriers. Because it is not so limited, Section 254(h)(2) authorizes the Commission to establish a funding mechanism for reimbursement of both carriers and non-carriers who provide the advanced services identified by the Board.

Reimbursement of both carrier and non-carrier providers of advanced services is necessary to avoid the anti-competitive consequence of reimbursing some, but not all, providers of such services. Section 254(h)(2)(A) does not permit the Commission to promulgate rules that would have an anti-competitive effect; the Section provides that the Commission shall establish "competitively

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<sup>11</sup> *Id.* at ¶ 613.

neutral rules.” Section 254(h)(2) therefore prohibits the Commission from establishing reimbursement rules that would tilt the competitive playing field for advanced services in favor of carriers by effectively reducing their price for providing such services to schools and libraries. Accordingly, the Commission cannot establish any reimbursement mechanism for carriers who provide Internet access if non-carriers who provide the same services are excluded from the mechanism. Such an exclusion would constitute a competitive disadvantage to the non-carrier, in violation of Section 254(h)(2) of the 1996 Act.

Accordingly, ITI urges the Commission to adopt the Joint Board’s recommendation that non-carriers receive reimbursement for their provision of advanced services to schools and libraries if the Commission establishes a mechanism for reimbursing carriers for providing such services.<sup>12</sup>

F. Funding for Internal Connections To Advanced Services (¶¶ 466 - 484)

The Joint Board’s decision recommends that the Commission include within its Section 254 reimbursement mechanism for advanced services “internal connections, which may include such items as routers, hubs, network file servers, and wireless LANs.”

Some commenters argued that the 1996 Act and its legislative history support universal service funding for internal connections, while other commenters identify statutory provisions and legislative history inconsistent with

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<sup>12</sup> The Commission could, of course, eliminate any competitive bias by establishing no funding mechanism for advanced services but that approach would not appear to be compelled by the objectives of Section 254(h)(2).



this result. We believe both sides have made strong arguments about the scope of the universal service provisions in the Act and whether courts are likely to agree with the Joint Board's recommendation to include internal connections, wiring, and equipment without a clear and express statutory mandate to do so from Congress.<sup>13</sup> Nevertheless, assuming for the sake of argument that such authority exists, the Joint Board's decision to recommend reimbursement for the provision of internal connections to schools and libraries also raises the competitive neutrality concerns identified in the previous section. As discussed above, if the Commission establishes a reimbursement mechanism for internal connection equipment, the competitive neutrality mandate in Section 254(h)(2) requires the Commission to establish a mechanism that is available to carriers and non-carriers alike.

G. Certification Requirements for Schools/Libraries (¶¶ 585-592, 599-604)

ITI urges the Commission to adopt the Joint Board's recommendation that the schools and libraries who request funding under universal service support mechanisms must certify that they have a technology plan for deploying "any necessary hardware, software and wiring, and . . . teacher training required to use the services effectively."<sup>14</sup> By requiring certification, the Commission will help to ensure that schools and libraries will use effectively the services and equipment they obtain.

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<sup>13</sup> We also believe that internal connection equipment, whether wired or wireless, does not constitute a service and the Commission may wish to clarify this point.

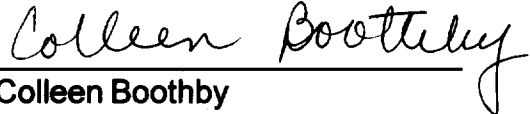
## **CONCLUSION**

ITI urges the Commission to adopt the Joint Board's Recommended Decision, with the clarifications discussed above. Implementation of the Joint Board's recommendations will encourage the development of an efficient, competitive marketplace that requires less regulation and will eliminate implicit subsidies that distort pricing and impede the development of competition.

Respectfully submitted,

Information Technology Industry  
Council

Fiona J. Branton  
Director, Government Relations  
and Regulatory Counsel  
Information Technology Industry Council  
1250 Eye Street, N.W., Suite 200  
Washington, D.C. 20005  
202-626-5751

  
Colleen Boothby  
Janine Goodman  
Levine, Blaszak, Block & Boothby  
1300 Connecticut Avenue, N.W.  
Suite 500  
Washington, D.C. 20036-1703  
202-223-4980

December 18, 1996

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### **Certificate of Service**

I, Andrew Baer, hereby certify that true and correct copies of the preceding Comments of the Information Technology Industry Council in the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, were served this 18th day of December, 1996 via hand delivery upon the following:

Ms. Sheryl Todd\*  
Common Carrier Bureau  
Room 8611  
2100 M Street, N.W.  
Washington, D.C. 20554

International Transcription Service  
Room 140  
2100 M Street, N.W.  
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Andrew Baer

December 18, 1996

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